SELF-DEFENCE IN ENGLAND: NOT QUITE DEAD

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Self-defence therefore, as it is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society.

William Blackstone, *Commentaries on the Laws of England (1765)*[1]

The Conservative position [to permit householders to use any force "not grossly disproportionate" against an intruder] is backward and barbaric.

Henry Porter, Afua Hirsch, "A barbaric take on self-defence: The Tory argument that burglars `leave their human rights at the door' is a nod to the lynch mobs of medieval England." The Guardian (2010).[2]

[*NOTE: This essay was written in Spring, 2011 and therefore before the riots of this past August.]

In sharp contrast to centuries of common law practice, modern England only grudgingly tolerates self-defence, even *in extremis*. Allowing householders to protect themselves and their families beyond what the authorities deem "reasonable" is denounced as vigilantism and lynch law, indeed a return to barbarism. The results of a policy which severely limits self-defence have been stark. English men and women have endured a doubling of gun crime in the last decade, a 25% increase in contact theft in the latest yearly report, and have a 23% risk of being crime victim. In 2009 an English home was burgled every two minutes.[3] On the other hand great leniency has been shown offenders. Only 54% of cases where prisoners are released meet the government's own standards for keeping the community safe.[4] Undeterred by the fact that forcing people to rely

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[1] William Blackstone, *Commentaries on the Laws of England,* 4 vols. (1765-1769), vol. 3, p. 4.

[2] Henry Porter, Afua Hirsch, "A barbaric take on self-defence: The Tory argument that burglars `leave their human rights at the door' is a nod to the lynch mobs of medieval England," guardian.co.uk, Feb. 2, 2010.

[3] Tom Whitehead, "Seven in ten burglars avoid prison, figures show," *The Telegraph* online, April 8, 2009.

[4] This figure is from November 2009. See "Latest Crime Statistics," Crimestoppers, http://www.crimestoppers - uk.org.

solely on police protection has failed to keep the public safe, most members of the police and political establishment along with most of the media remain insistent that current constraints on defence by law-abiding people are just fine.[5] Professionals can, will, and should handle the situation. I have written at length on the vanishing right of self defence in England.[6] This brief essay is intended to bring that issue up to date, first pinpointing the statutes that have reduced the public's ability to defend themselves, then highlighting recent criminal cases, and finally discussing the present effort to change the law.

Three Statutes that Eviscerated the Right to Self-Defence

At least from the reign of Henry VIII the killing of would-be robbers, burglars, or other assailants by their intended victims to protect themselves and their families and their neighbors was not just excusable but justifiable. The act was a necessary recognition of the law of nature and a good deed, since it assisted the authorities in keeping the peace.[7] In fact there was a duty to intervene if you witnessed a crime in progress. Having arms for defence was an ancient duty and in 1689 was inscribed in the English Bill of Rights as a right of Protestants, some 90% of the population.[8] In practice Catholics were permitted guns for self-defence as well. And deterrence

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[5] Tom Whitehead, "Gun crime doubles in a decade," *The Telegraph*, October 27, 2009, http://www.telegraph.co.uk/journalists/tom-whitehead/; "Crime in England and Wales 2008/09: A Summary of the Main Findings, UK Home Office. This report lists the crime reported by police alongside the results of the British Crime Survey. The difference between the two is marked with the police recording lower crime figures in every category. The disparity is most likely due to police under-recording crime either to appear more effective and/or because much crime is not brought to their attention.

[6] See Joyce Lee Malcolm, *Guns and Violence: The English Experience* (Cambridge, 2002).

[7] 24 Henry VIII, c. 5, That a Man killing a Thief in his Defence, shall not forfeit his Goods. (1532)

[8] English Bill of Rights, 1 William & Mary, sess. 2, c. 2.

by armed individuals worked. For nearly 500 years the rate of violent crime had been in decline.[9]

The first real restriction on the right to be armed came in 1920. In the wake of World War I the British government feared a Bolshevik revolution and worried about the thousands of returning soldiers brutalized by a brutal war.[10] The Firearms Act required that all handguns be registered by the police. Police approval was to be based upon whether the applicant was deemed a "suitable person" and had a "good reason" to have the gun. The standards for both criteria were secret and were tightened by the Home Office over the years. They were spelled out in a series of classified directives sent to the police throughout the realm. Keeping a handgun for self-defence began to be restricted from the very first of these directives, that of 1920. Police were informed that "a good reason for having a revolver" would be, "if a person lives in a solitary house, where protection against thieves and burglars is essential, or has been exposed to definite threats to life on account of his performance of some public duty."[11] Presumably being exposed to threats for reasons other than the performance of a public duty was not to be regarded as a serious matter. By 1946 the Home Secretary told Parliament, "I would not regard the plea that a revolver is wanted for the protection of an applicant's person or property as necessarily justifying the issue of a firearm certificate."[12] By 1969 the Home Office instructed the police of England and Wales: "It should never

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[9] Malcolm, *Guns and Violence*, pp. 133-134.

[10] The Firearms Control Act, 10 & 11 Geo. V c. 43 (1920). And See Malcolm, *Guns and Violence*, pp. 141-149.

[11] Malcolm, *Guns and Violence,* pp. 155-156. Also see pp. 149-150.

[12] Quoted in Colin Greenwood, *Firearms Control: A Study of Armed Crime and Firearms Control in England and Wales* (London, 1972), p. 72.

be necessary for anyone to possess a firearm for the protection of his house or person." [13]

Still, invaluable as a handgun is for self-defence, other weapons can be useful. That is where the second statute came in. The 1953 Prevention of Crime Act forbid carrying anything that could serve as an offensive weapon in a public place.[14] The police could stop, search and arrest without a warrant anyone they believed was violating the law. Those stopped were guilty unless they could prove they had a "reasonable excuse" for carrying the so-called "offensive weapon." What items constituted offensive weapons? Almost anything that could be used for self-defence, if carried for that purpose, was automatically an offensive weapon. The justification for this government monopoly on the use of force was the argument that the police would protect individuals, they did not have to protect themselves. The protection of the people was seen as the particular responsibility of society, that is of the police. The fact that "society" was clearly unable to protect everyone, or indeed anyone, all the time did not dissuade the government from pressing for the prohibition on the carrying of any offensive item, the attorney general telling Parliament, "the argument of self-defence is one to which perhaps we should not attach too much weight."[15] Since its enactment pedestrians have been arrested for carrying a razor, a pickaxe handle, a stone and a drum of pepper.[16] A tourist who used her pen knife to protect herself when she was attacked was convicted of carrying an offensive

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[13] Malcolm, *Guns and Violence, I p. 171.*

[14] Prevention of Crime Act, 1 & 2 Elizabeth II, c. 14 (1953). Also see Malcolm, *Guns and Violence,* pp. 171-180.

[15] Malcolm, *Guns and Violence,* p. 176.

[16] Ibid., p. 185.

weapon. [17] Beyond the law against carrying an article for defence there is a list of prohibited devices the possession of which results in dire punishment . Along with rocket launchers and machine guns it includes chemical sprays and any knife with a blade more than three inches long.[18] After a man attacked by two assailants in a subway car managed to fight them off and probably saved his life by pulling the blade out of his ornamental walking stick, walking sticks with blades inside were banned.[19] The fact he would likely have been killed if he did not have the device was no matter. On the list it went, forbidden to the next person in distress.

The third of the trio of statutes gutting the right to self-defence was the Criminal Law Act of 1967.[20] This was a large, comprehensive act meant to overhaul English criminal law by abolishing the old distinction between felonies and misdemeanours. Slipped in without parliamentary debate, probably without MPs even noticing, was a change in the old rule that a threatened person must, in some circumstances, retreat before resorting to deadly force. In the new statute a threatened person no longer needed to retreat, but was authorized to use only such force as "is reasonable in the circumstances" to prevent a crime or assist in the arrest of offenders or suspected offenders. According to legal authorities the "technical rules about the duty to retreat" were superseded and were now "simply a factor to be taken into account in deciding whether it was necessary to use force and whether the force was reasonable."[21] The impact of this change has actually made a plea of self-defence

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[17] Ibid.
[18] Firearms Act, 1968, Section 5, Weapons subject to general prohibition.
[19] Malcolm, *Guns and Violence*, p. 184.
[20] Criminal Law Act, Elizabeth II c. 58 (1967) especially sect. 3.
[21] J. C. Smith, *Smith and Hogan Criminal Law*, 9th ed . (London, 1999), p. 257.

more difficult, since everything turns on the notion of what constitutes "reasonable" force against an attempt to commit a crime. Since extreme force is not permissible to protect property, the only thing someone threatened with robbery can do by way of defence is "to give the robber blows and *threaten* him with a weapon."[22] Of course it is not permitted to carry a weapon in a public place. But even an attack on one's home, since it might only be an attack on property, leaves the householder liable to what might be regarded as excessive force. This statute has left the law of self-defence in disarray. A scholar who examined the impact of the statute wrote that it was "unthinkable" that in drafting the Criminal Law Act of 1967 "Parliament should inadvertently have swept aside the ancient privilege of self-defence. Had such a move been debated it is unlikely that members would have sanctioned it."[23] She was anxious that the Parliament "consider the wider problems posed by the use of force," adding, "In view of the inadequacy of existing law, there is some urgency here."[24] That was thirty-seven years ago. The situation has yet to be significantly altered.

THE EFFORT TO PERMIT FORCEFUL DEFENSE

By 2004, with violent crime rising dramatically and householders finding themselves victimized by a law that prosecuted them if they harmed an intruder while permitting the intruder to sue them for accidental injuries, the *Sunday Telegraph* launched a campaign to change the law. When thousands of Radio 4's

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[22] Glanville Williams, *Textbook of Criminal Law*, 2nd ed. (London, 1983), p. 507.
[23] Carol Harlow, "Self-Defence: Public Right or Private Privilege," *Criminal Law Review*, 1974, pp. 537, 538.
[24] Ibid.

Today Show listeners called for a law authorizing them to use force to protect their homes, the MP pledged to introduce the winning measure, denounced the proposal as a "ludicrous, brutal, unworkable, blood-stained piece of legislation." "The people have spoken," he added, "the bastards."[25] Of course that so-called "blood-stained piece of legislation" was the common law rule until recently. Unmoved by a poll showing seventy-two percent of respondents believed the law on home defence "inadequate and ill-defined," the Blair administration buried two bills introduced by the Tories to give householders more scope to protect themselves and their families. Instead, Prime Minister Tony Blair ordered an "internal investigation" after which, not surprisingly he and his Home Secretary, Charles Clarke, pronounced existing law "sound". All that was needed, Clarke suggested, was to explain to the public more clearly how far they could go to protect their homes.

It was a series of high profile prosecutions of the victims of assault or burglary that had galvanized the public to demand a more realistic right to protect themselves. The most notorious was the 2000 case of Tony Martin, a poor farmer, that ignited a firestorm. Martin's isolated farmhouse had been robbed six times. He had duly notified the police, but nothing was done to protect him. Than at 10:00 pm one night the seventh break-in took place. Martin crept downstairs in the dark and shot at the two burglars he heard rummaging through his silverware. At daybreak he discovered he had killed one. He had also wounded the second thief, a career burglar well-known to police. Down came the law. Martin was vigorously prosecuted on charges of murder and attempted murder, the prosecutor claiming he

[25] See "Howard on New Call on Self-defence," *Guardian Unlimited,* Jan. 13, 1905.

had lain in wait for the unsuspecting burglars and caught them like "rats in a trap."[26] Martin was found guilty and sentenced to life in prison. After an emotional public outcry, his conviction was reduced to five years, though on the grounds that he had been abused as a child. Unlike the career burglar he had wounded, Martin was denied parole on the ground that he posed a danger to burglars.[27]

The government assuranced the public that such prosecutions were rare. Nothing really changed until 2007 when Gordon Brown's Home Secretary, Jack Straw, acknowledged that the law needed modification. It was Straw's own experiences with muggers that had convinced him. Straw was dubbed a "have-a-go hero" for personally chasing and restraining muggers in *four* separate incidents near his south London home. Although in loyal party fashion he insisted that the self-defence laws worked "much better than most people think," he conceded the policy did not work "as well as it could or should."[28] "The justice system must not only work on the side of the people who do the right thing as good citizens," he explained, but must also "be seen to work on their side."[29] Straw was even prepared to urge people to help the police apprehend criminals, a position sharply at odds with years of insistence that peacekeeping must be left to the professionals. Anyone else witnessing a crime in progress was instructed to walk on by.

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[26] Malcolm, *Guns and Violence*, p. 213.
[27] Malcolm, *Guns and Violence,* pp. 213 -216; Val MacQueen, "British Man Denied Parole, Rules `A Threat to Burglars,'" *Front Page Magazine*, January 31, 2003. The wounded burglar was given public monies to sue Martin for his injuries which he claimed kept him from practicing judo and harmed his sex life. A film taken of him sprinting up a flight of stairs demonstrated the fraud and ended his suit.
[28] "`Self-defence' law to be reviewed," BBC News Online, September 27, 2007; Robert Winnett, "New laws protect have-a-go home owners," *The Telegraph,* September 27, 2007.
[29] Winnett, "New laws."

After years of blocking reform, therefore, the Labour government suddenly announced it had ordered an "urgent review" to ensure those people protecting themselves or their homes in a "proportionate" way would not be prosecuted. The idea was to ensure that the law "better balances the system in favour of victims of crime."[30] Skeptics claimed that this move, along with announced reviews of gambling, of Tony Blair's 24-hour drinking law and drug laws were designed to appeal to Tory voters as speculation mounted that a snap election would be called. Whatever the motives, the resulting new standards were part of the Criminal Justice and Immigration Act of July, 2008. Section 76, subsection 7 of the act provided that a court dealing with the issue of self-defence should have regard to the following consideration:

> (a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and
> (b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

The legislation goes on to note that where there is evidence that the defendant was mistaken as to the degree of force required to defend himself or others, the jury can have regard to the reasonableness of his belief in determining whether he genuinely held that perception. [Parenthetically, it is difficult to see how a jury could decide what amount of force was actually necessary during a violent encounter.] To continue: "Once a jury determines that D did genuinely have a particular belief, he was to be judged on the facts as he believed them to be regardless of the fact that his belief was mistaken, and regardless of the fact that the mistake may not have been

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[30] Ibid.

one made by a reasonable person."[31] This seemed, but was in fact, little if any different from the position at common law. Indeed, sub-section 6 provides that the degree of force used by D "is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances." Although a somewhat more generous standard, the continued assessment of the state of mind of the defendant/victim by police and a judge and jury hardly justified *The Daily Telegraph*'s triumphant report that home owners and other people acting in self-defence were now to have the legal right to fight back against burglars and muggers "free from fear of prosecution."[32] As the *Telegraph* article explained, under the new rules police, prosecutors and judges would have to assess a person's actions based, not on what *they* regarded as "reasonable," but on how the defender "saw it at the time" even if in hindsight it would be regarded as unreasonable. Homeowners would be able to shoot a burglar who threatened them and beat a mugger rather than running away. But attacking a fleeing criminal with a weapon would not be permitted nor would lying in wait to ambush him. The *Telegraph* failed to mention that the problem of proportionality remained.

In 2008, shortly before the new rules went into effect, an even more egregious case occurred with the familiar threat to prosecute the victim of a violent attack. A shopkeeper, Tony Singh, was getting into his car at the end of a workday when he was attacked by a robber armed with a knife. In the ensuing struggle the robber was fatally stabbed with his own knife. Despite these undisputed facts and the

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[31] Ibid.
[32] Richard Edwards and Christopher Hope, "You have the right to shoot dead a burglar," *The Daily Telegraph*, July 16, 2008. The explanation that follows is from this article.

robber's long record of violent crime, the Crown prosecution was prepared to bring charges against Mr. Singh. It took public outrage to persuade the authorities not to prosecute. These new laws were supposed to ensure that there would be no more prosecutions of this sort. Nick Herbert, the shadow justice secretary when Labour's new rules were introduced, was highly skeptical, claiming "it will give no great protection to householders confronted by burglars because it's nothing more than a re-statement of the existing case law." The standard of reasonableness remained and still must be judged by police and prosecutors. Mr. Straw, however, argued that the changes "will make clear – victims of crime, and those who intervene to prevent crime, should be treated with respect by the justice system. We do not want to encourage vigilantism, but there can be no justice in a system which makes the victim the criminal." *The Daily Telegraph* article announcing the new rules reported that a leaked draft of the Policing Green Paper revealed that homeowners might have to wait up to three days after reporting a crime before they saw a police officer.

The new scope for self-defence, while somewhat more permissive, has not been a great success. Laws remaining on the books deprive law-abiding citizens of the physical means of protecting themselves. And so we have cases like that of the young couple who used pepper spray in self-defence not realizing it was illegal. Under the Firearms Act using a can of pepper spray is ranked with possessing a rocket launcher or firing a machine and carries the same 10-year prison sentence.[33] Authorities still believe the public too irresponsible to be permitted to handle a firearm. In November, 2009 a former soldier who turned in to the police a shotgun

[33] "Couple admit using pepper spray," July 18, 2007, CheshireOnline.

he had discovered in his garden faced at least a five-year prison sentence.[34] Paul Clarke, 27, was found guilty at Guildford Crown Court of possessing the gun and personally handing it in to police. Clarke had spotted a black bag at the bottom of his garden. When he investigated he discovered it contained a sawed-off shotgun and two cartridges. He rang the Chief Superintendent and asked if he could come to see him. He then brought the gun putting it on a table carefully pointing toward the wall. Although he was turning in a weapon he had found, he was immediately arrested and taken to the cells for possession of a firearm. There was a law in Surrey, although the Surrey police confessed they had never bothered to let the public know about it, that forbade a member of the public who discovered a gun from actually touching it. The individual was to report the discovery by telephone and the police would pick the gun up. Since the prosecutor pointed out to the jury that the possession of a firearm was a "strict liability" charge, the jury had no option but to convict. The judge commented, "This is an unusual case, but in law there is no dispute that Mr. Clarke has no defence to this charge. The intention of anybody possessing a firearm is irrelevant."

On one side of the self-defence law we have legislation that treats adults, even those with military training, as incompetent to protect themselves or even to touch a firearm, yet threatens law-abiding citizens with a ten-year prison term for defending themselves with a non-lethal propellant such as pepper spray. The theory behind this legal structure as noted above, is that individuals don't need to

[34] "Ex-soldier faces jail for handing in gun," November 13, 2009, ?

protect themselves, they might do themselves harm, the professionals will protect them. Or will they?

When it comes to punishing criminals the authorities are more sympathetic than they are to their victims. Britain has a criminal justice system worried about overcrowding in prisons, the failure of prisons to rehabilitate, and the cost of incarceration. Hence courts and police are under pressure to give offenders lenient sentences, "community" sentences doing some so-called public service, or no sentence at all. It is not surprising that people are reluctant to bring charges or appear as witnesses, since the offender may be back in the community immediately and in a position to threaten them. In 2009 seventy percent of those burglars actually apprehended avoided prison.[35] The same year some 20,000 young offenders were electronically tagged and sent home, a 40% increase over three years.[36] Worse, one pedophile in three who preys on young children was let off with a "caution" as were four in ten other serious offenders. A caution means no hearing or trial takes place. The offenders are released back into the community with, what is in effect, a warning. Cautions were intended for less serious offences and required the offender to admit guilt. In some areas of England, however, police let more than half of the offenders they actually catch and who normally would face a judge, off with a caution. In the five years to 2007 the number of such cautions

[35] Tom Whitehead, "Seven in ten burglars avoid prison, figures show," April 8, 2009, *The Telegraph* at telegraph.co.uk. Ministry of Justice figures showed a total of 30,353 offenders guilty of burglary in 2007 but only 9,229 of them received a custodial sentence. Less than half of those who targeted residential dwellings were jailed.

[36] "Latest Crime Statistics," Crimestoppers.

given to violent criminals had risen by 82 per cent.[37] In eight police areas half or more of those guilty of serious offences were given cautions.

The combination of legal restrictions on any item that law-abiding people could use for self-defence, insistence upon a standard of "reasonable force" against intruders and assailants, and a policy that turns convicted criminals back into the community continues to make a mockery of a workable right to self-defence.

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The prevailing legal bias against self-defence may now be reversed. The new Conservative-Liberal Democrat coalition wants to expand the scope for justifiable self-defence. As Jack Straw sensibly argued in 2000, if you see a crime taking place "you have all of a millisecond to make the judgement about whether to intervene. You haven't got time in that situation to wonder where does the balance lie--what constitutes reasonable force."[38] This is to echo American justice Oliver Wendell Holmes's point some eighty years earlier, "detached reflection cannot be demanded in the presence of an uplifted knife."[39] Labour revised the standard to expand the scope for self-defence by permitting people to defend themselves, their families and property with reasonable force. The difficulty is that they still insist the level of force used should not be excessive or disproportionate, as the Crown prosecutors, rather than a Court, view them.[40] Notwithstanding the new emphasis on the mind

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[37] Tom Whitehead, "Four in 10 serious criminals let off with a caution." January 21, 2009, *Telegraph.co.uk.*

[38] "`Self-defence' law to be reviewed," September 27, 2007, BBC Newsonline.

[39] *Brown v. U.S.* 256 U.S. 335 (1921).

[40] The Criminal Justice and Immigration Act, 2008.

of the defender, the subjective notions of "excessive" and "disproportionate" remain to be weighed, not only in the mind of the defender but in that of police commissioners and government prosecutors who must decide whether to bring charges. The Conservative government's proposed new standard would *only* prosecute householders who used "grossly disproportionate" force, a standard that favors the householder and restores more traditional values.[41]

When first advanced this standard was immediately condemned by Keir Starmer, the Director of Public Prosecutions. Like his predecessors, Starmer, a former human rights lawyer, insisted that the current law was working well and prosecutions of defenders are exceedingly rare.[42] According to Starmer,

> The law is that reasonable force can be used and if the householder makes a mistake they will be protected because they will be judged on the basis of the mistake that they made. What the law. . . doesn't allow is for individuals after the event, having pursued someone who may or may not have been an intruder, then to seek some sort of summary justice. . . we can't allow our system to be undermined by those exacting summary judgment.[43]

The particular case that had provoked the public and the Conservative party to insist that a new standard beyond the Labour revision was necessary and to which Starmer was alluding involved Munir Hussain, a successful businessman and chairman of the Asian Business Council.[44] Mr. Hussain, his wife and three teen-aged children returned from their mosque to find three masked intruders armed with knives in their home in High Wycombe, Buckinghamshire. The burglars beat

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[41] Nicholas Watt, "DPP rejects demand for law change on householders who fight off burglars," December 28 2009, *The Guardian,* guardian.co,uk.
[42] "DPP rejects demand for law change on householders who fight off burglars."
[43] Ibid.
[44] The account of this case is based on Adam Sherwin, "Jail for `courageous' Munir Hussain who beat intruder with cricket bat," *The Sunday Times,* December 15, 2009, http://www.timesonlione.co.uk.

Hussain and threatened to kill him. They tied the hands of his wife and children behind their backs and forced them to crawl from room to room. When his wife pleaded with the men to stop beating her husband they threatened to kill her. Hussain's son managed to escape and two of the burglars then fled. Hussain threw a table at the third burglar who fled as well. Hussain gave chase and with his younger brother, Tokeer, managed to catch Walid Salim beating him with a cricket bat and, according to witnesses, a metal pole causing permanent brain injury. Salim would be the only one of the three intruders ever caught. Because of his injury Salim was judged unable to plead and, despite some 50 past convictions, was only charged with false imprisonment and released with a two-year supervision [parole]. Although supposedly beaten too badly to face a court for the vicious attack on the Munirs, Salim was soon afterward taken into custody for credit card fraud and awaits trial for that offence.

Munir and Tokeer Hussain did not fare as well in the judicial system as Salim. The Hussains, both prominent and respected in their community, were found guilty of causing grievous bodily harm with intent. Judge John Reddihough sentenced Munir to 30 months in jail and Tokeer to 39 months for what the prosecution argued was a "revenge attack." They were not supposed to chase the intruders and, in their anger and fury, beat the one they managed to catch. But the provocation and the emotional upset, of course, were extreme. The police never caught the other two. The prosecution's heavy punishment of the Hussains seemed unjust to the public. It seemed unjust to the Court of Appeal as well. The Lord Chief Justice, Lord Judge, England's most senior judge, freed Munir Hussain suspending his sentence as an

"act of mercy."[45] The Lord Chief Justice pointed out, however, that the violence inflicted on the intruder was a reaction to the threatening experience Hussain had just endured, fears for the lives of his family and "the honour of his wife an daughter." While the violence was not lawful in normal cases and would have resulted in very long prison terms, the judge noted the men were of exceptionally good character. "It is rare," he said, "to see men of the quality of the two appellants in court for offences of serious violence." He acknowledged the "call for mercy" on their behalf was intense and concluded it "must be answered" but that the trial "had nothing to do with the right of the householder to defend themselves or their families or their homes. The burglary was over and the burglars had gone. No one was in any further danger from them."[46] The judge does not tell us what he thought this did have "to do with," if not the emotion roused by being put in a life-and-death situation.

Tokeer Munir's sentence was reduced from 39 months to two years and he remained in prison. Despite the judge's insistence the case had nothing to do with self-defence, it sparked renewed outrage over limitations on that basic right. At Scotland Yard Sir Paul charged authorities for often being too quick to criticize people who tried to stop crimes: "We should be starting off by applauding them, thanking them. We ought to be saying these people are heroes, they make society worthwhile."[47] Patrick Mercer, the Tory MP who had introduced the bill five years

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[45] Frances Gibb, Sean O'Neill and David Sanderson, "Judge's `act of mercy' on Munir Hussain fuels row on self-defence," January 21, 2010, *The Sunday Times*, http://www.timesonline.co.uk.
[46] Ibid. The judge stressed, however, "This trial had nothing to do with the right of the house holder to defend themselves or their families or their homes. The burglary was over and the burglars had gone. No one was in any further danger from them."
[47] Ibid.

earlier to give householders more scope for self-defence, a bill the Blair government had blocked, was among those urging permission for defenders to use any force not "grossly disproportionate."[48] David Davis, the former shadow home secretary, agreed: "It is long past time we had a return of common sense to our law courts." David Cameron, leader of the Conservative Party, defended that position insisting that "burglars leave their human rights outside the moment they invade someone else's property" and pledged that if elected a Tory government would change the law.[49] And now that a Tory government has been elected it has proposed the change.

Whether the Conservative government will insist upon the change in the standards for self-defence, despite the often hysterical rhetoric against it, is unclear. The new government has very serious economic problems and a host of other issues demanding attention. Among the more surprising supporters of permitting real scope for self-defence is none other than Brendan Fearon, the career burglar wounded by Tony Martin after breaking into Martin's farmhouse in 1999. Fearon admitted a change in the law "would have deterred him." David Davis put it simply: "People have a moral right to defend their family and property and the law should reflect that." There is reason to hope that former standards of respect for what Blackstone saw as the first great and primary right, the right of personal security will return to Great Britain.

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[48] Ibid.
[49] Kirsty Walker, "`Burglars give up any human rights': David Cameron gets tough on right to defend home," February 1, 2010, *Daily Mail,* http://www.dailymail.co.uk.